Issued by THE LABOR AND INDUSTRIAL RELATIONS COMMISSION

FINAL AWARD ALLOWING COMPENSATION

(Supplementing Award and Decision of the Labor and Industrial Relations Commission after Remand from the Missouri Court of Appeals)

Injury No.: 99-069528

Employee: William Bowers

Employer: Hiland Dairy Company

Insurer: Old Republic Insurance Company

Additional Party: Treasurer of Missouri as Custodian of Second Injury Fund

Date of Accident: February 25, 1999

Place and County of Accident: Phelps County, Missouri

The above-entitled workers' compensation case was previously submitted to the Labor and Industrial Relations Commission for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission found that the award of the administrative law judge (ALJ) was supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirmed the award and decision of the administrative law judge dated November 4, 2002.

Two separate injuries were incorporated for trial before the ALJ on February 19, 2002. Two separate awards were written. The one covered the l999 injury, which is before us. The other award covered an injury in 2000, which was not reviewed and is not before us for reference or consideration.

In the 1999 case, the ALJ awarded an amount of permanent partial disability. The ALJ denied payment and/or reimbursement of past medical bills in the form of prescriptions and two hospital bills. The ALJ further denied Employee's request for future medical treatment. Employee filed his review with the Commission. The Commission affirmed the award with a separate opinion, dissenting in part. Employee appealed to the Missouri Court of Appeals, Southern District.

The Court affirmed the findings regarding permanent partial disability but remanded to the Commission regarding the findings on past and future medical care. The matter was remanded to the Division of Workers' Compensation for the purpose of providing a complete record and providing information as to the inception of the need for medications. That is to say, whether the need for medications was from the preexisting conditions, the 1999 injury or the 2000 injury. Following remand a complete transcript has been established.

Following our review of the entire transcript we deny Employee's claim for past medical expenses in the form of the two hospitalizations. The Commission finds that Employee has not established that the need for those hospitalizations was medically causally related to an effort to cure and relieve the Employee from the effects of the 1999 injury as required by section 287.140 RSMo.

The Court determined that the ALJ, and the Commission, had used an incorrect standard in addressing the issue of the need for past and future medical in the form of prescription medications. The Court determined that it is not necessary that the care benefit only the injuries or conditions, which are the subject of the workers' compensation claim. Rather, the medical care, to be compensable, must be shown to be related or due to the injury or condition which is the subject of the claim. The fact that such care may have the effect of also benefiting a preexisting condition is not relevant. Accordingly, any treatment which flows from the compensable injury in question, but

which may also benefit an underlying preexisting condition, is still a benefit, which Employee is entitled to recover under his compensable injury.

We must use these criteria in assessing Employer/Insurer's responsibility in this 1999 claim. In applying this measure of proof we find that Employee has not met his burden to establish that the requested past or future medical care would flow from the duty imposed upon Employer/Insurer under section 287.140.1 RSMo.

Employee has not demonstrated that past bills are causally related to the work injury of 1999. *Pemberton v. 3M Co.,* 992 S.W.2d 365, 368-69 (Mo. App. 1999).

In addressing the need for pain relieving and/or other medications in this case Employee has established only that those medications, past and future, are to cure and relieve him of his preexisting condition, his compensable injury of 1999 and his compensable injury of 2000, which is not before us. Employee has not shown that the need for past and/or future medications is related to the 1999 injury.

Employee's expert, Dr. Cohen testified that the need for medications, future care and treatment was to relieve the 1999 injury or the 2000 injury. Dr. Guarino testified that the medications were universal prescriptions for pain and were not for an isolated injury but for all of the complaints of pain. Dr. Guarino testified that the medications prescribed, treated not only the effects of the 1999 injury but were for that injury and the 2000 injury.

Thus we have two compensable matters tried simultaneously. Past and future medical care was claimed by Employee on both matters. Expert physicians testified as to the need for past and future medications but could only say that both injuries produced that need. Accordingly, we find that Employee has not established that the need for past and future medications and/or treatment is the result of the 1999 injury for which Employer/Insurer is liable.

It is not sufficient for an employee to show that the need for treatment arises from one or the other of two causes, for one of which, but not for the other, the employer would be liable. Employee must produce evidence from which it may reasonably be found that the need for medical treatment arose from the cause for which employer would be liable. *Griggs v. A.B. Chance Company,* 503 S.W.2d 697 (Mo. App. W.D. 1973).

The Commission finds the testimony of Dr. Satterly to be more persuasive than that of the other experts in this matter. The Commission may determine the credibility of expert witnesses. *Malcom v. La-Z-Boy Midwest Chair Co.,* 618 S.W.2d 725, 726 (Mo. App. 1981). We accept and adopt the opinion of Dr. Satterly to the effect that Employee was in no need for further treatment as the result of the injury of 1999.

The Commission further approves and affirms the administrative law judge's allowance of attorney's fee herein as being fair and reasonable.

Any past due compensation shall bear interest as provided by law.

Given at Jefferson City, State of Missouri, this 10th day of March 2005.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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William F. Ringer, Chairman

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Alice A. Bartlett, Member

DISSENTING OPINION FILED

Attest: John J. Hickey, Member

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Secretary

DISSENTING OPINION

I had dissented from the opinion of my fellow Commissioners in our earlier decision. I must maintain that dissent.

In my opinion the Court is directing that we find the medical treatment sought and obtained as compensable. The record supports such a decision. Certainly, some of the medications indirectly treat underlying conditions, and, in fact, pain in general. To require that an Employee quantify or segregate his pain complaints between myriad causes is not reasonable in these circumstances. To hold that a medication may serendipitously treat overlapping complaints from a condition preexisting injury but not treat overlapping complaints from a condition subsequent to the injury makes no sense.

In this case the physicians testified that pain is being treated. The treatment is for pain that developed largely after the 1999 injury. The treatment is primarily because of that injury and is compensable.

I would find the testimony of Dr.Cohen and Dr. Guarino credible. They testified that the need for certain medications arose only after the 1999 injury.

The testimony of Dr. Satterly is limited and not to be accepted as dispositive of the issue of further treatment. His opinion regarding future treatment went only to Employee's right shoulder. He did not address the neck complaints which both
Dr. Satterly and Dr. Guarino testify are more probably than not, related to the 1999 injury.

As I pointed out in my earlier dissent, Employee remains in constant pain since the 1999 injury. Only his medications enable him to somewhat control his pain. To deny this management is certainly not compatible with the intent and spirit of the Workers' Compensation Law.

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John J. Hickey, Member